



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen Haase

SUBJECT: SEE BELOW

DATE: June 19, 2003

COUNCIL DISTRICT: 3
SNI: 13th Street

**SUBJECT: ORDER TO SHOW CAUSE FOR CONDITIONAL USE PERMIT CP 98-009
LOCATED AT THE WEST SIDE OF NORTH 13TH STREET, 120 FEET SOUTHERLY
OF EAST HEDDING STREET.**

BACKGROUND

On March 24, 1999 the Planning Commission of the City of San José adopted a resolution approving Conditional Use Permit CP98-009 for a 45-room hotel in the CN Commercial Zoning District. A copy is attached to this staff report.

The applicant signed a notarized permit acceptance on May 4, 1999 agreeing to comply with all of the conditions of the permit. The permit was approved with a condition (Concurrent Condition No.2)requiring conformance to approved development plans entitled "Comfort Inn 875 Thirteenth Street," dated January 25, 1999.

As part of the proposed redevelopment of the property with a new hotel, the applicant planned to remove from the site an existing billboard facing North 13th Street, placed at the northern property line. Accordingly, the approved plans for the project show the billboard removed from the property. Existing improvements not shown to remain on development plans are deemed removed. There is an additional billboard present at the southern property line, but is on the adjoining restaurant property to the south, and is not an issue for this project.

Planning staff contacted the applicant in writing in August 2002 to reiterate that the approved Permit included the removal of the billboard. Since then, the applicant has constructed the hotel, and it received a final inspection and certificate of occupancy and opened for business in May 2003.

Unfortunately, the billboard remains on the property. The billboard's owner, Clear Channel Outdoor, Inc., has a valid lease with the property owner that runs until July 1, 2005. The applicant has as yet been unable to reach agreement with Clear Channel to buy out the remaining lease and remove the billboard.

Based on this information, the Director of Planning issued a Notice of Non-Compliance on May 23, 2003 (see attached) requiring that the billboard be removed by June 9, 2002. A site inspection indicated that the billboard had not been removed by the specified date; consequently, the Director of Planning issued an Order to Show Cause (see attached) for failure to abate, correct or rectify within the time specified by the Director in the Notice of Non-Compliance.

Notice of Noncompliance/Order to Show Cause Process

The Zoning Code specifies that compliance with all conditions of development permits is required and provides the Notice of Noncompliance and Order to Show Cause procedures as tools for addressing violations of these requirements. The Director of Planning is authorized to issue a Notice of Noncompliance for any failure to comply with the Zoning Code or permit condition. If the violation is not corrected within the timeframe specified in the Notice of Non-Compliance, the Director may issue an Order to Show Cause setting a public hearing before the Planning Commission. If the Planning Commission determines that a violation of any condition of a development permit was not abated within the timeframe identified in the Notice of Non-Compliance, the Commission may revoke, suspend or modify the Permit. The decision of the Planning Commission on an Order to Show Cause for a Conditional Use Permit may be appealed to the City Council.

ANALYSIS

Billboards can create visual clutter and blight. Recognizing this, General Plan Urban Design Policy #10 specifies that new billboards can only be allowed through Planned Development zoning. The policy also encourages relocation of existing billboards from impacted areas to locations where they would have a less visually blighting effect.

When sites with existing billboards are proposed for redevelopment, such as the subject site, staff is supportive of proposals by applicants to remove the structures. The City, however, cannot require removal of billboards as a condition of approval without the applicants' cooperation, unless full compensation is provided to the lessor and lessee. In this case, the applicant proposed removal of the billboard as part of the project, and the City granted its approval. The applicant did not, unfortunately, obtain prior approval to terminate the lease from the lessee, Clear Channel.

Following is a brief summary of compliance with the conditions of the Conditional Use Permit CP98-009 (see attached Permit).

CP98-009 Condition No. 2. This condition requires the applicant to conform to the approved development plans entitled "Comfort Inn, 875 Thirteenth Street," dated January 25, 1999. The billboard is absent from the development plans referenced in this condition. The billboard was not removed within the timeframe identified in the Notice of Non-Compliance and continues to exist on the site in violation of the Conditional Use Permit.

The applicant (see attached letter dated June 9, 2003) maintains they have made every reasonable effort to remove the billboard, but that the billboard lessee (Clear Channel) has refused and continues to refuse to cooperate with terms for a buyout of the remaining lease. The applicant maintains revocation of the Permit to force closure of the hotel until the billboard is removed

would cause an undue hardship for the applicant and the staff employed at the hotel. The applicant also notes the hotel, if closed, would become an easy target for vandalism and graffiti, and would become an eyesore.

The options before the City are to revoke, suspend, or modify the existing Permit. The Planning Commission, or City Council on appeal, could revoke or suspend the Permit, which would result in closing the hotel in the hopes the applicant would be sufficiently motivated to reach a deal with Clear Channel. Staff does not recommend this option, however. Staff believes the applicant is sincere in his efforts to remove the billboard, but that Clear Channel is unwilling to cooperate. In the event the hotel is shut down and Clear Channel remains uncooperative, the billboard would remain the length of the lease, until July 1, 2005, while the applicant and the hotel staff would suffer hardship. However, staff does not believe the continued presence of the billboard warrants such a drastic action.

Staff recommends the Planning Commission modify the existing Permit, as suggested by the applicant, to include a condition that precludes renewal of the lease, so that the billboard would in fact be removed from the site following expiration of the lease July 1, 2005.

Conclusion

The billboard remaining on this site is in violation of the Conditional Use Permit approved by the Planning Commission. The violation was not corrected in response to the Notice of Non-Compliance issued by the Director of Planning. Staff believes that the Commission should modify the Conditional Use Permit with conditions specifying immediate removal of the billboard upon expiration of the existing lease July 1, 2005.

RECOMMENDATION

Staff recommends that the Planning Commission modify the Conditional Use Permit with the additional condition (Condition No. 27) included in the revised Draft Permit (attached).

STEPHEN HAASE, DIRECTOR
Planning, Building and Code Enforcement

Attachments: 1) Notice of Non-Compliance
2) Order to Show Cause
3) Existing approved CP98-009 resolution and Site Plan
4) Draft modified resolution for CP98-009
5) Applicant's letter dated June 9, 2003
6) photo of hotel and billboard

c: Applicant
Clear Channel Outdoors, Inc, ATTN: Patrick Powers, 1601 Maritime St, Oakland CA 94607

